



DECISION ON REQUEST FOR REVIEW

Cases nos.

**CH/00/6444, CH/00/6506, CH/00/6511
and CH/00/6513**

**Nedo and Saveta TRKLJA, Envera-Vera ĐIKIĆ, Salko and Katarina OVČINA,
Manojlo and Danica AVDALOVIĆ**

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 5 July 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the respondent Party's request for a review of the decision of the Second Panel of the Chamber on the admissibility and merits of the aforementioned case;

Having considered the First Panel's recommendation;

Adopts the following decision pursuant to Article X(2) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina as well as Rules 63-66 of the Chamber's Rules of Procedure:

I. FACTS AND COMPLAINTS AND SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

1. In their applications, the applicants complained of the failure of the competent authorities of the Municipalities Mostar-Zapad and Mostar-Jugozapad to execute decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), confirming their occupancy rights over apartments. The applicants claimed that the failure of the competent administrative organ to decide upon their requests to be reinstated into their apartments is a violation of Articles 6, 8 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention and Articles 2, 14, 17 and 26 of the International Covenant on Civil and Political Rights (ICCPR). They also complained that they had been discriminated against in the enjoyment of these rights on the grounds of their origin.

2. On 11 April 2002 the Second Panel issued a decision finding that that the applicants have been discriminated against in the enjoyment of their rights under Articles 8 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention and Articles 17 and 26 of the ICCPR. The Chamber also found that the non-enforcement of the decisions of the CRPC constituted a violation of the applicants' right to respect for their homes, within the meaning of Article 8 of the Convention, and the applicants' right to peaceful enjoyment of their possessions, within the meaning of Article 1 of Protocol No. 1 of the Convention. Finally, the Second Panel also considered that the absence of an effective response to the applicants' various claims and petitions to the administrative authorities constitutes a violation of Article 13 of the Convention. Accordingly the Chamber found that the Federation of Bosnia and Herzegovina ("the Federation") was in breach of Article I of the Agreement and ordered it to enable the applicants to regain possession of their apartments without further delay and at the latest one month after the date on which the decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure. The Federation was further ordered to pay the applicants compensation for non-pecuniary damage in the amount of 2000 Convertible Marks (*Konvertibilnih Maraka*, "KM") in recognition of the applicants' particular suffering as a result of their inability to regain possession of their apartments and of the discrimination they had been subjected to. Moreover the Federation was ordered to pay compensation for loss of use of their homes in different amounts at a rate of 200 KM per month, starting 30 days after the filing of a request for enforcement of the CRPC decision with the competent authority. Furthermore, the Federation was also ordered to pay to each of the applicants 200 KM for each further month that they remain excluded from their apartments as from April 2002 until the end of the month in which they are reinstated. Finally, the Federation was ordered to take all necessary measures to ensure the respect and implementation of Article 18f of the Law on Cessation of the Application of the Law on Abandoned Apartments, including investigations and appropriate penalties for the officers and other persons responsible for the systematic policy of discrimination and obstruction of minority returns in the Municipalities Mostar-Zapad and Mostar-Jugozapad.

3. On 10 May 2002 the Second Panel's decision was delivered at a public hearing in pursuance of Rule 60(2) of the Chamber's Rules of Procedure.

4. On 11 June 2002 the respondent Party submitted a request for review of the decision. In accordance with Rule 64(1) the request for review was considered by the First Panel.

II. THE REQUEST FOR REVIEW

5. In its request for review, the respondent Party challenges the Second Panel's decision on the following grounds

- (a) that the amount of compensation for non-pecuniary damages, 2000 KM, was not in accordance with the previous decisions of the Chamber;
- (b) that the orders to compensate the applicants for loss of use of their homes were excessive;
- (c) that the respondent Party is not responsible for the loss of the possession of their apartments and the damage caused to the applicants.

III. OPINION OF THE FIRST PANEL

6. The First Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(3)(a). The First Panel recalls that under Rule 64(2) the Chamber shall not accept the request unless it considers (a) that the case raises a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance and (b) that the whole circumstances justify reviewing the decision.

7. The respondent Party has failed to give any grounds as to why the issues referred to in the request for review would raise “a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance”. The First Panel recalls that the Second Panel did not find any responsibility for the loss of the possession of the applicants’ apartments but for the impossibility of the applicants to repossess their apartments.

8. As the request for review fails to meet the first of the two requirements set forth in Rule 64(2), the First Panel unanimously, recommends that the request be rejected.

IV. OPINION OF THE PLENARY CHAMBER

9. The plenary Chamber agrees with the First Panel that, for the reasons stated, the request for review does not meet the first of the two conditions required for the Chamber to accept such a request pursuant to Rule 64(2).

V. CONCLUSION

10. For these reasons, the Chamber, unanimously,

REJECTS THE REQUEST FOR REVIEW.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber